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CITIZENS SUMMARY

Findings in the audit of the Governor's Withholdings and Estimated Appropriations

Background

The state fiscal year begins on July 1 each year. Funding is provided annually to state agencies through the appropriation process. Appropriations provide a cap to the amount of spending for various components of agency operations. The Missouri Constitution separates the powers of state government into 3 branches: legislature, executive, and judiciary. It requires the Governor to submit to the General Assembly a proposed budget, and it authorizes the General Assembly to make specific appropriations. The Constitution forbids any state revenue from being diverted or withdrawn from the state treasury unless it is in accordance with an appropriation made by law. The Governor has the power to veto any portion of an appropriation bill, but the General Assembly may override a veto with a two-thirds majority in each house. The Constitution also gives the Governor the power to (1) control the rate at which any appropriation is expended during the year by allotment or other means, and (2) reduce the expenditures below appropriated amounts (withhold) when actual revenues are less than the revenue estimates upon which the appropriations were based.

Amounts withheld by the Governor cannot be spent unless released by the Governor. There are two types of withholdings, reserves and restrictions. State law requires 3 percent of each appropriation be set aside as a reserve fund and expended only with approval of the Governor. Governor withholdings in excess of the 3 percent reserves are referred to as restrictions. The Governor made withholdings during fiscal years 2013 and 2012. For the General Revenue Fund (GRF), the Governor subsequently released all fiscal year 2013 restrictions, but net fiscal year 2012 restrictions totaled approximately \$53.3 million.

General Revenue Fund Restrictions and Appropriations

The Governor's actions to restrict fiscal year 2012 GRF expenditures violated the Missouri Constitution because actual revenues exceeded estimated revenues. Lawful mechanisms that would preserve the constitutionally-mandated separation of powers were available to address any crisis impacting the budget. When a significant event occurs that requires additional spending authority, all or most of that funding can be included in the next year's budget. For example, in fiscal year 2012, the Governor restricted approximately \$172 million (excluding the \$56 million Facilities Maintenance Reserve Fund transfer restriction) to pay for disaster recovery related to spring 2011 flooding and a massive tornado that struck the City of Joplin on May 22, 2011, but less than \$7.8 million was actually spent on these disasters that year. The Governor could have lawfully reduced planned spending by vetoing line item budget items (subject to a potential override vote of the General Assembly). In addition, if additional spending authority is needed during a budget year, the Governor could recommend a supplemental appropriation(s), or utilize the Budget Reserve Fund.

If approved by voters in November, House Joint Resolution No. 72 will narrow the Governor's ability to violate constitutional provisions by giving the General Assembly the power to override the Governor's restrictions.

Estimated (E) Appropriations
and Documentation

The use of E appropriations violated state law and allowed the Governor to spend from certain appropriations with no spending limits. Certain appropriations have been designated with an "E" because they are hard to estimate and/or could vary based on external factors. In fiscal year 2013, expenditures from 16 of 64 GRF E appropriations exceeded appropriation amounts in approved house bills by \$35 million, while in fiscal year 2012, 26 of 79 exceeded approved amounts by \$59 million. In June 2012, the Cole County Circuit Court ruled that the use of E appropriations specifically violates Article IV, Section 23, of the Constitution, which states each appropriation shall specify the amount and purpose of the appropriation. The Office of Administration (OA) does not prepare formal documentation or calculations to support the need for restrictions and does not use a formula to establish restriction amounts. According to the state Budget Director, the Governor and OA prioritize programs and restrict those of lower priority, and consider the programs' other funding sources when deciding upon restrictions. In fiscal year 2012, the Governor's most significant unrestored restrictions included \$13.9 million from the Department of Social Services Medicaid appropriations, and \$17 million from colleges and universities.

Accounting for Governor
Withholdings

The OA has not recorded Governor withholding activities in the state's accounting system, SAM II, in a fully transparent manner. OA personnel record both reserve and restriction amounts in the "reverted" field in SAM II, making it impossible for users to separately identify reserves and restrictions. In addition, offsetting adjustments when the agencies redistribute reserve funds from one appropriation to another, are not separately identified. OA personnel prepare spreadsheets to separately record reserves, restrictions, and releases of restrictions, but these spreadsheets do not reflect the release of reserves or offsetting adjustments. Section 37.070.1, RSMo, requires each state department to carry out its mission with full transparency to the public.

Because of the limited objectives of this review, no overall rating is provided.
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